IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No.

PHILLIPS PETROLEUM COMPANY, *Petitioner,*

v.

AMBROSE OLDLAND, CARRIE KNOWLES, ERNEST OLDLAND, ET AL., *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

Petitioner is named as respondent in the petition, filed on behalf of Ambrose Oldland, et al., original plaintiffs in this cause, which was docketed May 22, 1951, as No. 749 of the October Term, 1950 (now No. 67, October Term, 1951). Phillips Petroleum Company, Petitioner, prays that this Court issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered March 10, 1951 (No. 4149, 187 F. 2d 780).

This Court has jurisdiction under 28 U. S. C., § 1254 (1), 62 Stat. 928.

On first appeal from the decision of the trial court denying any relief, judgment was reversed and the cause remanded with directions to enter judgment for plaintiffs for an overriding royalty on production from Phillips Petroleum Company's Levison Lease in the Rangely Field of Colorado (R. 2-4). It was implicit in the opinion and mandate issued by the Court of Appeals that plaintiffs were entitled to personal judgment in money for the value of oil already produced and sold from the lease, but nothing was said in the opinion or the mandate respecting interest on that amount (R. 2-4). No application was filed to enlarge the mandate. The trial court, over protest of Phillips Petroleum Company, entered judgment awarding interest (R. 16, 18). Phillips Petroleum Company appealed but the Court of Appeals upheld the granting of interest at six per cent (6%). Judge Bratton dissented as to this point (R. 33-39).

The question here presented is the one upon which the Court of Appeals divided, i. e.: Since the mandate of the Court of Appeals made no provision for interest did the trial court have authority to enlarge the judgment by adding interest thereto?

This Court should issue a Writ of Certiorari to review the decision of the Court of Appeals because the majority of that Court has not given proper effect to applicable decisions of this Court which hold that where a judgment is reversed with directions to the trial court to enter judgment for a specific amount with nothing being said about interest, it is the duty of the trial court to enter judgment strictly in accordance with the mandate and not to add the allowance of interest.

Neither expressly nor by implication did the Court of Appeals, in reversing the trial court and directing the entry of judgment for the plaintiffs, direct that the plaintiffs be awarded interest (R. 2-4). An inferior court has no power or authority to deviate from the mandate issued by an ap-

pellate court. It is clear that the interest permitted was in excess of the terms of the mandate and wrongly included in the judgment. The trial court was without power to depart from the mandate in that manner. This Court has so held: *In Re Washington & Georgetown Railroad Company,* 140 U. S. 91, 11 S. Ct. 673, 35 L. ed. 339, and in the more recent case of *Biggs* v. *Pennsylvania Railroad Company,* 334 U. S. 304, 68 S. Ct. 1039, 92 L. ed. 1403.

Respectfully submitted,

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